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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,	)	No. CR 06-00189 SBA
	)	
Plaintiff,	)	STIPULATION AND PROTECTIVE
	)	ORDER REGARDING PRODUCTION OF
v.	)	CONFIDENTIAL DISCOVERY
	)	
MICHAEL GREEN JOHNSON, et al.,	)	
	)	
Defendants.	)	

Plaintiff, by and through its attorney of record, and defendants, by and through their attorneys of record, hereby stipulate as follows:

1. On March 23, 2006, a federal grand jury indicted defendants for conspiracy to distribute, and to possess with intent to distribute, cocaine, cocaine base, and methamphetamine in violation of Title 21, United States Code, Section 846, and distribution, and possession with intent to distribute, cocaine, cocaine base, and methamphetamine in violation of Title 21, United States Code, Section 841(a)(1).

2. The indictment followed an approximately five-month wiretap investigation. In its applications for wiretap orders the government relied on information provided by, and controlled purchases of narcotics conducted by, confidential sources whom the government believes could

STIPULATION AND PROTECTIVE ORDER  
RE CONFIDENTIAL DISCOVERY

1 be in danger if their identities were determined from the wiretap applications, related documents,  
2 and other materials regarding confidential sources and witnesses.

3 3. The government believes that the proposed protective order is necessary to prevent  
4 certain discovery materials from being disseminated among members of the public and the  
5 various defendants in this case, as well as their associates and family members. The government  
6 is particularly concerned about the wiretap affidavits and related documents because the  
7 identities of confidential sources and informants could be determined from those materials. The  
8 government believes that the proposed protective order will greatly reduce the possibility that  
9 individuals will misuse discovery materials to identify, intimidate, and/or harm confidential  
10 sources, witnesses, and/or defendants. The parties do not anticipate that a large volume of  
11 material will need to be covered by this protective order.

12 4. Defendants and their counsel deny that any person would be endangered by defendants'  
13 possession of any discovery material in this matter. The parties agree that no inference should  
14 be drawn about defendants' dangerousness because of their agreement to enter into this  
15 stipulation.

16 5. The parties agree that the following conditions, if ordered by the Court pursuant to  
17 Federal Rule of Criminal Procedure 16(d)(1), should serve the government's interest in  
18 protecting confidential sources, defendants, and other members of the community and reducing  
19 the risk of retribution taken against confidential sources by precluding the circulation of the  
20 wiretap affidavits and other related documents throughout the prison system and the community,  
21 while permitting the defense to obtain discovery required by Federal Rule of Criminal Procedure  
22 16.<sup>1</sup> Accordingly, the parties jointly request that the Court order as follows:

23 a. For purposes of this Order, the term "defense team" refers to: (1) the counsel of  
24 record for defendants; (2) the joint defense motions/research attorney; (3) defense investigators  
25 assisting those counsel with this case; (4) any expert witnesses who may be retained or appointed

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26  
27 <sup>1</sup> The parties agree that the purpose of this stipulation is to regulate the manner in which  
28 confidential discovery is produced and is not intended to govern the timing of the production of any  
discovery in this case.

1 by the defense team; and (5) any discovery coordinator and his or her staff whose function is to  
2 copy and disseminate discovery provided by the government to the defendants' counsel. Each  
3 member of the defense team must provide the government with a letter indicating that they have  
4 read this stipulation and agree to be bound by its terms. For purposes of this Order, the term  
5 "defense team" does not include defendants.

6 b. The government is authorized to provide each defense team with discovery  
7 required by F.R.Cr.P. 16 and may, in its discretion, designate any discovery produced as  
8 "Confidential Discovery" to be governed by the terms of this protective order. The government  
9 may designate discoverable documents, items, and materials relating to confidential sources or  
10 other individuals who would be in danger if their identities were known, by marking such  
11 discovery as "CONFIDENTIAL" and shall produce such discovery on a CD marked  
12 "WARNING: CONTENTS SUBJECT TO PROTECTIVE ORDER. UNAUTHORIZED  
13 COPYING OR VIEWING IS SUBJECT TO PUNISHMENT AS CONTEMPT OF COURT."

14 c. The defense teams shall not permit anyone, including defendants, to have physical  
15 possession of Confidential Discovery pursuant to this Order other than the defense teams.

16 d. A defense team shall not divulge the contents of any Confidential Discovery  
17 provided pursuant to this Order to anyone other than the individual defendant it represents. A  
18 defense team member may show Confidential Discovery to the individual defendant it represents  
19 in the physical presence of a defense team member but may not permit that defendant to have  
20 physical possession of the Confidential Discovery.

21 e. The defense team shall not permit Confidential Discovery provided pursuant to  
22 this Order to be outside of the defense team's offices, homes, vehicles, or personal presence.  
23 The defense team may take Confidential Discovery into a custodial facility to show it to the  
24 individual defendant it represents but, as explained above, the defense team must maintain  
25 physical possession of the Confidential Discovery and may not allow the defendant to have  
26 physical possession of the Confidential Discovery.

27 f. In the event that one of the parties files a pleading that references or contains  
28 Confidential Discovery or information therefrom, that filing must be made under seal.

1  
2 g. Each defense team shall return all Confidential Discovery provided pursuant to  
3 this Order to the government fourteen calendar days after the following event: dismissal of all  
4 charges against defendant; defendant's acquittal by court or jury; filing of a notice of appeal  
5 from conviction and/or sentence; or the conclusion of any direct appeal, whichever occurs latest  
6 in time. In the event that the defense team has made notes or marks on the Confidential  
7 Discovery constituting work product the defense team shall return the materials to the  
8 government in a sealed container labeled "WORK PRODUCT-DESTROY."

9 h. In the event that a defendant's counsel believes that a document or other item of  
10 discovery identified by the government as Confidential Discovery covered by this protective  
11 order needs to be retained or possessed by defendant himself or herself, defendant's counsel  
12 shall first meet and confer with the government in an effort to reach a stipulation and proposed  
13 order to exempt the item or document from the protective order. If the government and a  
14 defendant's counsel are unable to reach such an agreement then defendant's counsel may apply  
15 to this Court for relief from the protective order as to the document or item of discovery at issue.  
16 This procedure is not intended to alter in any way the otherwise applicable law relating to the  
17 showing that must be made by any party seeking a protective order or relief therefrom.

18 i. After the conclusion of proceedings in the district court or any direct appeal in the  
19 above-captioned case ("this case"), the government will maintain a copy of all Confidential  
20 Discovery produced in this case. The government will maintain such documents until the time  
21 period for filing a motion pursuant to 28 U.S.C. § 2255 has expired. After the statutory time  
22 period for filing such a motion has expired, the government may destroy the documents. In the  
23 event a defendant is represented by counsel and files a motion pursuant to 28 U.S.C. § 2255, the  
24 government will provide that counsel with a copy of the Confidential Discovery under the same  
25 restrictions as trial and direct appeal defense counsel. Defendant's attorney in any action under  
26 28 U.S.C. § 2255 shall return the Confidential Discovery fourteen calendar days after the district

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court's ruling on the motion or fourteen calendar days after the conclusion of any direct appeal of the district court's denial of the motion, whichever is later.

IT IS SO STIPULATED.

DATE: July 3, 2006

Respectfully submitted,

KEVIN V. RYAN  
United States Attorney

/s/  
GARTH HIRE  
JAMES E. KELLER  
Assistant United States Attorneys  
  
Attorneys for Plaintiff  
UNITED STATES OF AMERICA

/s/  
MARK VERMEULEN, ESQ.  
Counsel for Michael Green Johnson

/s/  
HAROLD ROSENTHAL, ESQ.  
Counsel for Bobby Ray Williams

/s/  
RICHARD TAMOR, ESQ.  
Counsel for Eddie Sherman Thomas

/s/  
MARY McNAMARA, ESQ.  
Counsel for Jose Carlos Batriz

/s/  
JULIANA DROUS, ESQ.  
Counsel for Stephen Louis Montgomery

/s/  
TONY TAMBURELLO, ESQ.  
Counsel for Demetriz Louis

/s/  
ALAN DRESSLER, ESQ.  
Counsel for Antoine Demetrious Smith

/s/  
GERI LYNN GREEN, ESQ.  
Counsel for Martin Eugene Roberts

<sup>2</sup> I hereby attest that I have on file all the holograph signatures for any signatures indicated by a "conformed" signature (/s/) within this e-filed document.

/s/  
JOYCE LEAVITT, ESQ.  
Assistant Federal Public Defender  
Counsel for Carl Gatlin

/s/  
BRIAN P. BERSON, ESQ.  
Counsel for Terrance Thomas

/s/  
MICHAEL STEPANIAN, ESQ.  
Counsel for Leon Wilson

/s/  
V. ROY LEFCOURT, ESQ.  
Counsel for Tanya Walton

/s/  
ERIK BABCOCK, ESQ.  
Counsel for Sherman Gay

/s/  
NINA WILDER, ESQ.  
Counsel for Mark Gibson

# ORDER

FOR GOOD CAUSE SHOWN, IT IS SO ORDERED: The government is hereby authorized, pursuant to Federal Rule of Criminal Procedure 16, to disclose discovery to the defense and may designate discovery to be governed by this protective order as Confidential Discovery. The parties are hereby ordered to comply with the conditions set forth in paragraphs 5(a)-(i) of this stipulation and order pursuant to Federal Rule of Criminal Procedure 16(d)(1).

DATED: 7/5/06

  
HONORABLE SAUNDRA B. ARMSTRONG  
UNITED STATES DISTRICT JUDGE